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7 TEXTIL, S.A., a/k/a INDITEX, S.A.

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
11

12 RUBE P. HOFFMAN CO.,
13 Plaintiff,

14 v.

15 ZARA USA, INC.; INDUSTRIA DE
16 DISENO TEXTIL, S.A., a/k/a
17 INDITEX, S.A., and DOES 1-5,
inclusive,
18 Defendant.

Case No. 2:18-cv-09114-MWF (AGR_x)

PROTECTIVE ORDER

Judge: Michael W. Fitzgerald
Mag. Judge: Alicia G. Rosenberg
Courtroom: 5A

1 On stipulation of the Parties, the Court enters a Protective Order in this matter
2 as follows:

3 **A. PURPOSES AND LIMITATIONS**

4 Discovery in this action is likely to involve production of confidential,
5 proprietary, or private information for which special protection from public
6 disclosure and from use for any purpose other than prosecuting this litigation may be
7 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter
8 the following Stipulated Protective Order. The parties acknowledge that this Order
9 does not confer blanket protections on all disclosures or responses to discovery and
10 that the protection it affords from public disclosure and use extends only to the limited
11 information or items that are entitled to confidential treatment under the applicable
12 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
13 that this Stipulated Protective Order does not entitle them to file confidential
14 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
15 followed and the standards that will be applied when a party seeks permission from
16 the court to file material under seal.

17 **B. GOOD CAUSE STATEMENT**

18 This action is likely to involve trade secrets, customer and pricing lists and
19 other valuable proprietary information for which special protection from public
20 disclosure and from use for any purpose other than prosecution of this action is
21 warranted. Such confidential and proprietary materials and information consist of,
22 among other things, sales summaries, pricing, internal business strategies, and other
23 confidential business or financial information, or information regarding confidential
24 business practices. The confidential information at issue is generally unavailable to
25 the public and may be privileged or otherwise protected from disclosure under state
26 or federal statutes, court rules, case decisions, or common law.

27 Accordingly, to expedite the flow of information, to facilitate the prompt
28 resolution of disputes over confidentiality of discovery materials, to adequately

1 protect information the parties are entitled to keep confidential, to ensure that the
2 parties are permitted reasonable necessary uses of such material in preparation for
3 and in the conduct of trial, to address their handling at the end of the litigation, and
4 serve the ends of justice, a protective order for such information is justified in this
5 matter. It is the intent of the parties that information will not be designated as
6 confidential for tactical reasons and that nothing be so designated without a good faith
7 belief that it has been maintained in a confidential, non-public manner, and there is
8 good cause why it should not be part of the public record of this case.

9 **2. DEFINITIONS**

10 2.1 Action: this pending federal law suit.

11 2.2 Challenging Party: a Party or Non-Party that challenges the designation
12 of information or items under this Order.

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
14 how it is generated, stored or maintained) or tangible things that qualify for protection
15 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
16 Cause Statement.

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
18 support staff).

19 2.5 Designating Party: a Party or Non-Party that designates information or
20 items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL.”

22 2.6 Disclosure or Discovery Material: all items or information, regardless of
23 the medium or manner in which it is generated, stored, or maintained (including,
24 among other things, testimony, transcripts, and tangible things), that are produced or
25 generated in disclosures or responses to discovery in this matter.

26 2.7 Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who has been retained by a Party or its counsel to serve as
28 an expert witness or as a consultant in this Action.

1 2.8 “HIGHLY CONFIDENTIAL” or “ATTORNEY EYES ONLY”
2 Information or Items: information (regardless of how it is generated, stored or
3 maintained) or tangible things that qualify for protection under Federal Rule of Civil
4 Procedure 26(c), and as specified above in the Good Cause Statement for which
5 disclosures to another party is likely to result in harm to the Designating Party.

6 2.9 House Counsel: attorneys who are employees of a party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.10 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.11 Outside Counsel of Record: attorneys who are not employees of a party
12 to this Action but are retained to represent or advise a party to this Action and have
13 appeared in this Action on behalf of that party or are affiliated with a law firm that
14 has appeared on behalf of that party, including support staff.

15 2.12 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.14 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.15 Protected Material: any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “ATTORNEY
26 EYES ONLY.”

27 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
28 from a Producing Party.

1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the
8 trial judge. This Order does not govern the use of Protected Material at trial.

9 **4. DURATION**

10 Once a case proceeds to trial, all of the court-filed information to be introduced
11 that was previously designated as confidential or maintained pursuant to this
12 protective order becomes public and will be presumptively available to all members
13 of the public, including the press, unless compelling reasons supported by specific
14 factual findings to proceed otherwise are made to the trial judge in advance of the
15 trial. See *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th
16 Cir. 2006) (distinguishing “good cause” showing for sealing documents produced in
17 discovery from “compelling reasons” standard when merits-related documents are
18 part of court record). Accordingly, the terms of this protective order do not extend
19 beyond the commencement of the trial.

20 **5. DESIGNATING PROTECTED MATERIAL**

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.
22 Each Party or Non-Party that designates information or items for protection under
23 this Order must take care to limit any such designation to specific material that
24 qualifies under the appropriate standards. The Designating Party must designate for
25 protection only those parts of material, documents, items, or oral or written
26 communications that qualify so that other portions of the material, documents, items,
27 or communications for which protection is not warranted are not swept unjustifiably
28 within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber the case development process or to impose
4 unnecessary expenses and burdens on other parties) may expose the Designating
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix, at a minimum, the legend
18 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "ATTORNEY EYES
19 ONLY" (hereinafter "CONFIDENTIAL legend"), to each page that contains
20 protected material. If only a portion or portions of the material on a page qualifies for
21 protection, the Producing Party also must clearly identify the protected portion(s)
22 (e.g., by making appropriate markings in the margins).

23 A Party or Non-Party that makes original documents available for inspection
24 need not designate them for protection until after the inspecting Party has indicated
25 which documents it would like copied and produced. During the inspection and
26 before the designation, all of the material made available for inspection shall be
27 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents
28 it wants copied and produced, the Producing Party must determine which documents,

1 or portions thereof, qualify for protection under this Order. Then, before producing
2 the specified documents, the Producing Party must affix the “CONFIDENTIAL
3 legend” to each page that contains Protected Material. If only a portion or portions of
4 the material on a page qualifies for protection, the Producing Party also must clearly
5 identify the protected portion(s) (e.g., by making appropriate markings in the
6 margins).

7 (b) for testimony given in depositions that the Designating Party identify the
8 Disclosure or Discovery Material on the record, before the close of the deposition.

9 (c) for information produced in some form other than documentary and for
10 any other tangible items, that the Producing Party affix in a prominent place on the
11 exterior of the container or containers in which the information is stored the legend
12 “CONFIDENTIAL.” If only a portion or portions of the information warrants
13 protection, the Producing Party, to the extent practicable, shall identify the protected
14 portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
16 failure to designate qualified information or items does not, standing alone, waive the
17 Designating Party’s right to secure protection under this Order for such material.
18 Upon timely correction of a designation, the Receiving Party must make reasonable
19 efforts to assure that the material is treated in accordance with the provisions of this
20 Order.

21 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time that is consistent with the Court’s
24 Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
26 resolution process under Local Rule 37.1, et seq. Any discovery motion must strictly
27 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

28 6.3 Burden. The burden of persuasion in any such challenge proceeding

1 shall be on the Designating Party. Frivolous challenges, and those made for an
2 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
3 other parties) may expose the Challenging Party to sanctions. Unless the Designating
4 Party has waived or withdrawn the confidentiality designation, all parties shall
5 continue to afford the material in question the level of protection to which it is entitled
6 under the Producing Party's designation until the Court rules on the challenge.

7
8 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this
11 Action only for prosecuting, defending, or attempting to settle this Action. Such
12 Protected Material may be disclosed only to the categories of persons and under the
13 conditions described in this Order. When the Action has been terminated, a Receiving
14 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).
15 Protected Material must be stored and maintained by a Receiving Party at a location
16 and in a secure manner that ensures that access is limited to the persons authorized
17 under this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
19 otherwise ordered by the Court or permitted in writing by the Designating Party, a
20 Receiving Party may disclose any information or item designated
21 "CONFIDENTIAL" only to:

22 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
23 as employees of said Outside Counsel of Record to whom it is reasonably necessary
24 to disclose the information for this Action;

25 (b) the officers, directors, and employees (including House Counsel) of the
26 Receiving Party to whom disclosure is reasonably necessary for this Action;

27 (c) Experts (as defined in this Order) of the Receiving Party to whom
28 disclosure is reasonably necessary for this Action and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (d) the Court and its personnel;

3 (e) court reporters and their staff;

4 (f) professional jury or trial consultants, mock jurors, and Professional
5 Vendors to whom disclosure is reasonably necessary for this Action and who have
6 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (g) the author or recipient of a document containing the information or a
8 custodian or other person who otherwise possessed or knew the information;

9 (h) during their depositions, witnesses, and attorneys for witnesses, in the
10 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
11 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
12 not be permitted to keep any confidential information unless they sign the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
14 agreed by the Designating Party or ordered by the Court. Pages of transcribed
15 deposition testimony or exhibits to depositions that reveal Protected Material may be
16 separately bound by the court reporter and may not be disclosed to anyone except as
17 permitted under this Stipulated Protective Order; and

18 (i) any mediator or settlement officer, and their supporting personnel,
19 mutually agreed upon by any of the parties engaged in settlement discussions.

20 7.3 Disclosure of “HIGHLY CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEY’S EYES ONLY” Information or Items. Unless
22 otherwise ordered by the court or permitted in writing by the Designating Party, a
23 Receiving Party may disclose any information or item designated “HIGHLY
24 CONFIDENTIAL” or “ATTORNEY EYES ONLY” only to:

25 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
26 as employees of said Outside Counsel of Record to whom it is reasonably necessary
27 to disclose the information for this Action.

28 (b) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (c) the court and its personnel;

4 (d) court reporters and their staff;

5 (e) professional jury or trial consultants, mock jurors, and Professional
6 Vendors to whom disclosure is reasonably necessary for this Action and who have
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (f) the author or recipient of a document containing the information or a
9 custodian or other person who otherwise possessed or knew the information; and

10 (g) any mediator or settlement officer, and their supporting personnel,
11 mutually agreed upon by any of the parties engaged in settlement discussions.

12 Notwithstanding the terms of this section, a designation by Defendants that
13 certain materials are “HIGHLY CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
14 – ATTORNEY’S EYES ONLY” shall not preclude Plaintiff’s attorney from
15 disclosing to an officer of Plaintiff with settlement authority the total revenue and
16 gross profits of a defendant as set forth in such material, so long as Plaintiff’s attorney
17 does not disclose the designated document itself. This section shall also not preclude
18 Plaintiff’s attorney from disclosing to an officer of Plaintiff with settlement authority
19 the names of any parties identified in materials designated as “HIGHLY
20 CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES
21 ONLY” and not otherwise disclosed in this Action who distributed product which is
22 alleged to infringe Plaintiff’s alleged copyright.

23 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
24 **PRODUCED IN OTHER LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other litigation
26 that compels disclosure of any information or items designated in this Action as
27 “CONFIDENTIAL,” that Party must:

28 (a) promptly notify in writing the Designating Party. Such notification shall

1 include a copy of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or order
3 to issue in the other litigation that some or all of the material covered by the subpoena
4 or order is subject to this Protective Order. Such notification shall include a copy of
5 this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued
7 by the Designating Party whose Protected Material may be affected.

8 If the Designating Party timely seeks a protective order, the Party served with
9 the subpoena or court order shall not produce any information designated in this
10 action as “CONFIDENTIAL” before a determination by the court from which the
11 subpoena or order issued, unless the Party has obtained the Designating Party’s
12 permission. The Designating Party shall bear the burden and expense of seeking
13 protection in that court of its confidential material and nothing in these provisions
14 should be construed as authorizing or encouraging a Receiving Party in this Action
15 to disobey a lawful directive from another court.

16 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
17 **PRODUCED IN THIS LITIGATION**

18 (a) The terms of this Order are applicable to information produced by a
19 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
20 produced by Non-Parties in connection with this litigation is protected by the
21 remedies and relief provided by this Order. Nothing in these provisions should be
22 construed as prohibiting a Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to
24 produce a NonParty’s confidential information in its possession, and the Party is
25 subject to an agreement with the Non-Party not to produce the Non-Party’s
26 confidential information, then the Party shall:

27 (1) promptly notify in writing the Requesting Party and the Non-Party that
28 some or all of the information requested is subject to a confidentiality agreement with

1 a Non-Party;

2 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
3 Order in this Action, the relevant discovery request(s), and a reasonably specific
4 description of the information requested; and

5 (3) make the information requested available for inspection by the Non-
6 Party, if requested.

7 (c) If the Non-Party fails to seek a protective order from this Court within
8 14 days of receiving the notice and accompanying information, the Receiving Party
9 may produce the NonParty's confidential information responsive to the discovery
10 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
11 not produce any information in its possession or control that is subject to the
12 confidentiality agreement with the Non-Party before a determination by the Court.
13 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
14 of seeking protection in this Court of its Protected Material.

15 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this
18 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
19 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
20 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
21 persons to whom unauthorized disclosures were made of all the terms of this Order,
22 and (d) request such person or persons to execute the "Acknowledgment and
23 Agreement to Be Bound" that is attached hereto as Exhibit A.

24 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
25 **OTHERWISE PROTECTED MATERIAL**

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other protection,
28 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
2 may be established in an e-discovery order that provides for production without prior
3 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
4 parties reach an agreement on the effect of disclosure of a communication or
5 information covered by the attorney-client privilege or work product protection, the
6 parties may incorporate their agreement in the stipulated protective order submitted
7 to the Court.

8 **12. MISCELLANEOUS**

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order, no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
18 only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue; good cause must be shown in the request to file
20 under seal. If a Party's request to file Protected Material under seal is denied by the
21 Court, then the Receiving Party may file the information in the public record unless
22 otherwise instructed by the Court.

23 **13. FINAL DISPOSITION**

24 After the final disposition of this Action, within 60 days of a written request
25 by the Designating Party, each Receiving Party must return all Protected Material to
26 the Producing Party or destroy such material. As used in this subdivision, "all
27 Protected Material" includes all copies, abstracts, compilations, summaries, and any
28 other format reproducing or capturing any of the Protected Material. Whether the

1 Protected Material is returned or destroyed, the Receiving Party must submit a written
2 certification to the Producing Party (and, if not the same person or entity, to the
3 Designating Party) by the 60 day deadline that (1) identifies (by category, where
4 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
5 that the Receiving Party has not retained any copies, abstracts, compilations,
6 summaries or any other format reproducing or capturing any of the Protected
7 Material. Notwithstanding this provision, counsel are entitled to retain an archival
8 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
9 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
10 work product, and consultant and expert work product, even if such materials contain
11 Protected Material. Any such archival copies that contain or constitute Protected
12 Material remain subject to this Protective Order as set forth in Section 4
13 (DURATION).

14 **14.** Any violation of this Order may be punished by any and all appropriate
15 measures including, without limitation, contempt proceedings and/or monetary
16 sanctions.

17
18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
19
20

21 Dated: February 13, 2019

22 By: *Alicia G. Rosenberg*
23 The Honorable Alicia G. Rosenberg
24 United States Magistrate Judge
25
26
27
28

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that
5 I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Central District of California in the
7 case of *Rube P. Hoffman Co. v. Zara USA, Inc., et al.* Case No. 2:18-cv-09114-MWF-
8 AGRx. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
11 that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with
13 the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint
18 _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order. Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26 Signature: _____